

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

COMCAST OF SOUTH CHICAGO, INC.¹

Employer

and

SHIRLEY COLVIN

Petitioner

and

LOCAL UNION 21, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Union

Case 13-RD-2371

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁴

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁵

All full time and part time employees working at any level in the following job titles: installers, advanced installers, service technicians, lead technicians, system technicians, advanced technicians, schedulers/routers, warehouse, custodians, fleet mechanics, customer sales and service representatives, and accounting clerks employed by the Employer at its facility currently located at 721 E. 112th Street, Chicago, Illinois; but excluding all office clerical employees, professional employees, confidential employees, outside personnel, administrative assistants, employee relations clerks/assistants, managers, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that

period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local Union 21, International Brotherhood of Electrical Workers.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **March 24, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **March 31, 2003**.

DATED March 17, 2003 at Chicago, Illinois.

Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The parties waived their right to file briefs in this matter. Accordingly, the arguments advanced by the parties at the hearing have been carefully considered.
- 3/ The Employer is a corporation engaged in the business of telecommunications, high speed data service, cable television service and telephone service.
- 4/ The hearing in this matter was held to address the contention made by Local 21, International Brotherhood of Electrical Workers ("Union") that the Region should hold in abeyance any further processing of the decertification petition filed by Shirley Colvin ("Petitioner") regarding the collective-bargaining representative of the employees employed by Comcast of South Chicago, Inc. ("Employer") in the appropriate unit. The Union contends that the matter should not be allowed to go forward to an election because of outstanding unfair labor practice ("ULP") charges pending before the Board and because of unrelated matters pending before a Third Party Neutral ("TPN") in accordance with procedures contained in a Neutrality Agreement between the Union and the Employer. Until these matters are resolved, the Union contends that further proceedings should be stayed in connection with the instant petition. Based upon the record and procedural posture of this petition, I find that the nature of the ULP allegations do not mandate dismissal of the petition, and that the determination regarding whether to proceed to an election in this case, despite the pending ULP charges, is an administrative matter, and that the Union's contentions concerning the Neutrality Agreement are inapposite. Accordingly, I shall direct an election in the unit described above; see National Labor Relations Board, Rules and Regulations, Section 102.67.

The Union contends that the petition should be dismissed pursuant to *Douglas-Randall*, 320 NLRB 431 (1995), because of the settlement agreement in case 13-CA-39406. As the union correctly notes, *Douglas-Randall* requires dismissal of a pending decertification petition where an employer settles an unfair labor practice charge with a promise to recognize and bargain with the incumbent union. However, the settlement agreement in case 13-CA-39406 does not contain such a promise, and only affirmatively requires the Employer to rescind unilateral changes. Accordingly, *Douglas-Randall* is not on point.

With respect to the pending ULP charges, relevant Board law mandates the dismissal of decertification petitions where it is shown that there is a causal connection between the alleged unfair labor practices and employee disaffection with the union. *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996); *Overnight Transportation Co.*, 333 NLRB No. 66 (2001). However, there is no allegation in any ULP charge pending before the Agency that the decertification petition filed by the Petitioner was tainted as a result of the Employer's conduct. Further, I take administrative notice of the fact the allegations in ULP Cases 13-CA-40535-1, filed October 1, 2002, 13-CA-40621-1 filed November 1, 2002, 13-CA-40717-1 filed December 17, 2002, and 13-CA-40728-1 filed December 26, 2002, are of the type that do not require the dismissal of this petition, and all post-date the filing of the instant petition by more than a year. This determination is an administrative matter.

Finally, with respect to the matters pending before the TPN under the Neutrality Agreement between the Employer and Union, it is clear from the record that the Petitioner is not a party to that agreement and there is nothing improper concerning the Petitioner's filing of the decertification petition. The provisions of the Neutrality

Comcast of South Chicago, Inc.
13-RD-2371

Agreement seek to bind the Employer and the Union. The Petitioner is not a party to the Neutrality Agreement and, therefore, is not bound to its terms. Thus, the Union's contentions that the Neutrality Agreement prohibits the utilization of proceedings before the National Labor Relations Board and the cases cited by the Union in support are inapposite. Accordingly, I find that there is no reason to stay the conduct of an election in this matter.

5/ The parties stipulated at the hearing and I find, that the above-described unit is an appropriate unit. There are approximately 130 employees in the unit found appropriate herein.

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Procedural Issues